

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2002-013423

01/03/2003

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED: _____

MARICOPA COUNTY SHERIFFS OFFICE

CLARISSE MCCORMICK

v.

MARICOPA COUNTY LAW ENFORCEMENT
OFFICER, et al.

MICHAEL W SILLYMAN

DALE F NORRIS
DAVID M PARK
MICHAEL NAPIER
REMAND DESK CV-CCC
MERIT SYSTEM ADMINISTRATOR
ATTN: JANICE STRATTON
301 W JEFFERSON, STE 240
PHOENIX AZ 85003

MINUTE ENTRY

Pursuant to A.R.S §12-910(e) this court may review administrative decisions in special actions and proceedings in which the State is a party:

The court may affirm, reverse, modify or vacate and remand the agency action. The court shall affirm the agency action unless after reviewing the administrative record and supplementing evidence presented at the evidentiary hearing the court concludes that the action is not supported by substantial evidence, is contrary to law, is arbitrary and capricious or is an abuse of discretion.

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The scope of review of an agency determination under administrative review places the burden upon the Petitioner to demonstrate that the agency's decision was arbitrary, capricious, or involved an abuse of discretion.¹ The reviewing court may not substitute its own discretion for that exercised by the agency,² but must only determine if there is any competent evidence to sustain the decision.³

This matter has been under advisement and the Court has considered and reviewed the record of the proceedings from the Law Enforcement Officers Maricopa County Merit System Commission, exhibits made of record and the Memoranda submitted. Here, the Maricopa County Sheriff's Office ("MCSO") seeks review of the Maricopa County Law Enforcement Officer's Merit System Commission's (the "Commission") final administrative order.⁴ After a careful review of the record, I must reverse the decision of the Commission as not supported by the record.

In the case at hand, Defendant Robert Chagolla, a deputy sheriff, was dismissed for lying about a material fact during the course of an official investigation. Chagolla admitted that he lied to his supervisor about hitting a suspect during an arrest; Chagolla's strike ruptured the suspect's spleen. Chagolla appealed his dismissal to the Commission, which reinstated Chagolla with a two-week suspension.

The issue before this court is whether the Commission abused its discretion by modifying the discipline administered by the appointing authority, the Maricopa County Sheriff's Office.⁵ The Commission is authorized to modify or revoke disciplinary decisions of the appointing authority only if those actions were arbitrary or taken without reasonable cause, or the penalty imposed by the appointing authority was so disproportionate as to be "shocking to sense of fairness."⁶ Arizona courts have turned to Pell v. Board of Education of Union Free School District No. 1,⁷ a New York Court of Appeals decision, delineating a useful test for determining what is or is not "shocking to one's sense of fairness."⁸ The New York court stated:

[I]t may be ventured that a result is shocking to one's sense of fairness if the sanction imposed is so grave in its impact

¹ Sundown Imports, Inc. v. Ariz. Dept. of Transp., 115 Ariz. 428, 431, 565 P.2d 1289, 1292 (App. 1977); Klomp v. Ariz. Dept. of Economic Security, 125 Ariz. 556, 611 P.2d 560 (App. 1980).

² Ariz. Dept. of Economic Security v. Lidback, 26 Ariz. App. 143, 145, 546 P.2d 1152, 1154 (1976).

³ Schade v. Arizona State Retirement System, 109 Ariz. 396, 398, 510 P.2d 42, 44 (1973); Welsh v. Arizona State Board of Accountancy, 14 Ariz. App. 432, 484 P.2d 201 (1971).

⁴ Pursuant to A.R.S. §38-1004.

⁵ The appointing authority is the employee's immediate departmental or agency employer. (Pima County v. Pima County Merit System Commission, 186 Ariz. 379, 381, 923 P.2d 845, 847 (App. 1996).

⁶ *Id* [citing Maricopa County v. Gottsponer, 150 Ariz. 367, 372, 723 P.2d 716, 721 (App.1986)]; See also Pima County Sheriff's Dept. v. Smith, 158 Ariz. 46, 760 P.2d 1095 (App.1988).

⁷ 34 N.Y.2d 222, 313 N.E.2d 321, 356 N.Y.S.2d 833 (1974).

⁸ Pima County Merit System Commission, 186 Ariz. at 381, 923 P.2d at 847.

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on the individual subjected to it that it is disproportionate to the misconduct, incompetence, failure or turpitude of the individual, or to the harm or risk of harm to the agency or institution, or to the public generally visited or threatened by the derelictions of the individuals. Additional factors would be the prospect of deterrence of the individual or of others in like situations, and therefore a reasonable prospect of recurrence of derelictions by the individual or persons similarly employed. There is also the element that the sanctions reflect the standards of society to be applied to the offense involved.⁹

Further, in *Maricopa County v. Gottsponer*,¹⁰ the Arizona court focused on yet another factor: whether the employee was “treated differently from other, similarly situated employees.”¹¹

An analysis using these criteria clearly shows that the penalty imposed by the MCSO appointing authority was not so disproportionate as to be shocking to sense of fairness. To employ dishonest officers such as Chagolla would obviously cause significant, irreparable harm to the morale at the MCSO and destroy Maricopa County citizens’ faith in the justice system. This, and the public harm that deceit fosters, are far more harmful than terminating a dishonest officer. There is an obvious need to deter dishonesty within the justice system, especially for persons occupying positions of public trust. Our society demands integrity from public officials.

Chagolla was not treated differently than other, similarly situated employees. Testimony in the record verifies that over ninety percent of officers committing falsehoods or dishonesty during an investigation were terminated. Deputy David Parra, who had no independent knowledge of Chagolla’s violation, gave Chagolla time to self-report, but was ready to report Chagolla if Chagolla didn’t confess the truth by the beginning of the week following the incident. Deputy Parra should have reported the incident immediately, and was consequently suspended for eighty hours for his failure to do so. Although Chagolla and Deputy Parra both committed MCSO policy violations, these violations were not similar.

The Commission’s decision that Chagolla could not be terminated due to the Commission’s Notice Requirement policy is clearly contrary to established Arizona law. In *Civil Service Commission of City of Tucson v. Livingston*,¹² the Court of Appeals explained:

⁹ *Pell*, 34 N.Y.2d at 234-35, 313 N.E.2d at 327-28, 356 N.Y.S.2d at 842-43.

¹⁰ 150 Ariz. 367, 723 P.2d 716, (App.1986).

¹¹ *Id* at 372-73, 723 P.2d at 721-22.

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The pivotal question on the issue of fair notice is whether the conduct was or **should have been known by him to be prohibited by the employer**. That knowledge may, of course, rest on fair implication, even though not made express, as in the kind of job-related misbehavior that is inconsistent with proper attention to work or proper loyalty to the employment relationship. This standard is an objective one. [The question is,] "Would the reasonable police officer under the circumstances know that his conduct was prohibited?" [Emphasis added]

The record is replete with evidence that Deputy Chagolla unquestionably knew that his actions were prohibited by the MCSO, and that such a violation of truthfulness during an investigation would result in termination. Hence, the motive for his deceitfulness. The Commission apparently ignored this evidence when making its decision to reinstate Chagolla.

Only where the administrative decision is unsupported by competent evidence may the court set it aside as being arbitrary and capricious.¹³ In determining whether an administrative agency has abused its discretion, I review the record to determine whether there has been "unreasoning action, without consideration and in disregard for facts and circumstances; where there is room for two opinions, the action is not arbitrary or capricious if exercised honestly and upon due consideration, even though it may be believed that an erroneous conclusion has been reached."¹⁴

After a careful review of the record, this court finds that the Commission's determination was an abuse of its discretion, as it ostensibly ignored the facts and circumstances surrounding the dismissal of Chagolla, and disregarded Arizona law directly on point.

IT IS THEREFORE ORDERED reversing the decision of the Maricopa County Law Enforcement Officer's Merit System Commission.

¹² 22 Ariz.App. 183, 188, 525 P.2d 949, 954 (1974), as cited by *Bishop v. Law Enforcement Merit System Council*, 119 Ariz. 417, 421, 581 P.2d 262, 266 (Ariz. App. 1978).

¹³ *City of Tucson v. Mills*, 114 Ariz. 107, 559 P.2d 663 (App. 1976).

¹⁴ *Tucson Public Schools, District No. 1 of Pima County v. Green*, 17 Ariz.App. 91, 94, 495 P.2d 861, 864 (1972), as cited by *Petrus v. Arizona State Liquor Board*, 129 Ariz. 449, 452, 631 P.2d 1107, 1110 (App. 1981).

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IT IS FURTHER ORDERED remanding this case back to the Maricopa County Law Enforcement Officers Merit System Commission with directions to reinstate the discipline of termination of Robert Chagolla.

/S/ HONORABLE MICHAEL D. JONES

JUDICIAL OFFICER OF THE SUPERIOR COURT